IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3351 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHODABHAI CHAKUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Mr.N.D.NANAVATI FOR NANAVATY ADVOCATES for Petitioners

Mr.PREMAL JOSHI, A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/01/2001

C.A.V. JUDGEMENT

1. The order of the Competent Authority under the Urban Land (Ceiling & Regulation) Act, (for short "ULC Act") passed on 25.10.1991 (Annexure : B) and consequent order of the Urban Land Tribunal in Appeal u/s.33 of the ULC Act passed on 29.10.1994 are under challenge in this petition. The prayers of the petitioners are that these two orders be quashed and set aside. They have further prayed for a writ of mandamus directing the respondents to give two separate units to the petitioners.

2. Brief facts are that according to the petitioners

their grand father Panchhabhai Kurjibhai Patel was a farmer and owner and occupier of various pieces of land in village Raiya. The joint family of the petitioners consisted of their grand father and his five sons including the father of the petitioners. The land bearing Survey No.56/2 of village Raiya was purchased in the name of the father of the petitioners, namely, Chhakubhai from joint family fund and at that time the family was joint and undivided. In 1965 the petitioners' grand father distributed the land of the family amongst his five sons including the father of the petitioners and at that time as the land bearing Survey No.56/2 was purchased in the name of the petitioners' father the said land came into the share of the father of the petitioners family. The petitioners' father filled in form No.1 u/s.6(1) of the ULC Act. The petitioners' father applied for exemption for agricultural purpose as contemplated u/s.20 of the ULC Act which was granted. Thereafter in the year 1981 the land in question was agreed to be sold to a co.operative society and therefore exemption u/s.20 for the said purpose was applied for. The exemption was not granted and therefore the petitioners' father filed writ petition No.6990 of 1990. The said petition was rejected. Before that vide order dated 26.8.1997 the respondent No.2 competent Authority passed ex-parte order u/s.8(4) of the ULC Act declaring the surplus land from the holding of the petitioners' father. The petitioners' father filed Appeal u/s.33 of the Act which was allowed and the matter was remanded to the Competent Authority for fresh hearing and order passed u/s.8(4) was quashed and set aside on 9.10.1990. The petitioners' case is that since the main order u/s.8(4) of the Act was set aside further proceeding undertaken by the Competent Authority stood terminated. Thereafter the matter was heard de-novo by the competent Authority who gave only one unit even though the petitioners being major sons and daughters of their father and the property was joint family property. An Appeal u/s.36 of the Act was preferred. This Appeal was also rejected on 29.10.1994. It is further the case of the petitioners that no valid notification for de-novo consideration was issued u/s.10(3) and (5) of the Act and part of the land belonging to the petitioners' family has been allotted to co.operative societies u/s.23 of the Act hence this petition was filed.

3. The case of the respondents in the counter Affidavit of Shri J.K.Astik, Competent Authority is that Chhakubhai Panchhabhai, father of the petitioners, filed form No.1 u/s.6(1) of the Act wherein he had shown several properties out of which he obtained agricultural

exemption with respect to six plots mentioned in Para : 4 of the counter Affidavit. Survey No.56/2 in dispute is one of such plots over which agricultural exemption was obtained by the petitioners' father. However, agricultural exemption was cancelled due to breach of conditions of exemption. As such form No.1 u/s.6(1) was processed and on 26.8.1987 an order was passed by the competent Authority u/s.8(4) that the land holder was entitled to retain one unit and 17604 sq.mtrs. of land from Survey No.56/2 and 560.51 sq.mtrs. from Survey No.38 paiki were declared as excess vacant land. Thereafter, further proceedings were taken under the Act. Notification u/s.10(1) of the Act was published in the Gazette dated 16.9.1987 and notification u/s.10(3) was published in the Gazette on 28.11.1987. Notice u/s.10(5) of the Act was issued on 1.12.1987 and possession of land in question was taken over on 28.3.1988. Thereafter compensation was awarded to the land holder u/s.11 of the Act on 17.3.1989. Out of the aforesaid land 5175 sq.mtrs. of land from Survey No.56/2 was allotted to Sales-Tax Employees Cooperative Housing Society, 6555 sq.mtrs. was allotted to Telephone Co.Operative Housing Society and 3450 sq.mtrs. was allotted to Civil Hospital Employees Co.Operative Housing Society u/s.23 of the Act.

4. According to the respondents feeling aggrieved from the order cancelling agricultural exemption u/s.20 the land holder filed writ petition before this Court vide Special Civil Application No.6990 of 1990. The land holder also filed Appeal u/s.33 of the Act against the order of the Competent Authority dated 26.8.1987. The Appeal was however allowed and the order of the competent Authority was quashed and the matter was remanded to the competent Authority for fresh consideration. Thereafter the Competent Authority passed an order dated 25.10.1991 declaring the land in question to be excess vacant land which was the same number and area as mentioned in the earlier order dated 26.8.1987. Thereafter the petitioners' father preferred an Appeal before the Urban Land Tribunal u/s.33 of the Act which was dismissed on 29.10.1994. Against this order the present petition has been filed which according to the respondents, deserves dismissal inasmuch as the impugned orders are perfectly legal and justified. The respondents have also pleaded that the land in question is not ancestral property of the petitioners and therefore the heirs of Chhakubhai Panchhabhai cannot be granted more units and that the petitioners have no right title or interest in the land in question which was self acquired property of their father. It is also pleaded that the form No.1 u/s.6(1) of the Act was filled by the petitioners' father in

individual capacity and not as Karta of joint Hindu Family hence also the petitioners are not entitled to hearing nor they are entitled to any share in such land nor the petitioners can claim that after remand they were entitled to receive notice from the Competent Authority nor they could have any right of hearing before the Competent Authority. Since the matter was proceeded de-novo in the light of directions given by the Tribunal, subsequent action cannot be invalidated.

5. Shri N.D.Nanavati, learned Counsel for the petitioners assailed the impugned orders on several grounds. The first ground was that the land in question is neither urban land nor the vacant land and as such the competent Authority had no jurisdiction to proceed under the ULC Act. He has drawn my attention to the definition and the provisions contained in Section 2(g), 2(h)(n)(o) and (q) and also to the pronouncement of the Apex Court in SMT.ATIA MOHAMMADI BEGUM V/S. STATE OF UP, reported in AIR 1993 SC 2465. After considering the Apex Court's verdict in this case I find that it is not applicable to the facts of the case before me. It was also contended by Shri Nanavati that the land in question is not urban land nor vacant land and is situated beyond 10 k.mtrs. from Rajkot Municipality hence it is not situated in urban Agglomeration. Shri Premal Joshi, learned A.G.P. has rightly pointed out that this plea was not taken either before the Competent Authority or before the Appellate Authority or in this petition hence this plea which requiring factual adjudication cannot be permitted to be raised for the first time in the course of arguments in this petition. I have examined the writ petition and found that no such plea has been taken by the petitioners that the land is not falling within the Urban Agglomeration. Even in the Appeal and before the Competent Authority no such plea was taken by the father of the petitioners. Shri Nanavati contended that this plea can be taken at any stage and even during arguments because it goes at the root of the jurisdiction of the Competent Authority to deal with the land in question. It is not understood why such important plea was not raised by the petitioners' father at appropriate stages before the competent Authority and the Appellate Authority and why the petitioners did not take this plea in their writ petition. It is also not understood why if the land in question did not fall within the urban agglomeration the land holder, namely, the father of the petitioners, filled form No.1 u/s.6(1) of the Act. He should not have filled this form if the land was not falling within the urban agglomeration.

6. Shri Nanavati has referred to two unreported decision in Special Civil Application No.2924 of 1998, decided on 19.6.1998, and Special Civil Application No.3877 of 1998, decided on 2.9.1998. Since these two cases were decided before the ULC Act was repealed the directions given in these judgments to the competent Authority to decide the question whether the land in question falls within the limit of urban agglomeration or not becomes redundant because, now the proceedings have abated before the Authorities in view of Section 4 of the Repeal Act.

7. It may also be mentioned that from the Judgment of the Competent Authority, Appellate Authority and the counter Affidavit of Shri J.K.Astik, competent Authority, it is clear that the petitioners' father obtained agricultural exemption in respect of six survey numbers which included survey No.56/2 which is the subject matter of dispute in this petition. The said agricultural exemption for Survey No.56/2 was subsequently cancelled due to breach of conditions of exemption vide order dated 13.3.1987 and exemption was withdrawn. The petitioners' father feeling aggrieved from the order cancelling the agricultural exemption u/s. 20 filed writ petition No.6990 of 1990 in which also he could not succeed. Consequently after cancellation of agricultural exemption the land in question will be considered to be urban land and declaration of vacant land therefore cannot be said to be without jurisdiction or authority.

8. The next contention of Shri Nanavati has been that after the remand order dated 9.10.1990 of the urban Land Tribunal the Competent Authority did not initiate de-novo proceeding and since the order of the Competent Authority was set aside in the order dated 9.10.1998 it was incumbent on the Prescribed Authority to prepare fresh draft statement and proceed de-novo as directed by the Tribunal. This contention also cannot be accepted. The Tribunal in its subsequent order dated 29.10.1994 (Annexure : A) has observed that on remand the case was again heard by the Competent Authority after hearing the parties as per the direction of the remand order and procedure was followed as per direction in the remand order of the Tribunal. This observation in Annexure : A cannot be said to be contrary to law. From the remand order dated 9.10.1990, it appears that only two points were pressed in the said Appeal. The first was that mandatory procedure for issuing draft statement, hearing the declarant and issuing final statement was not followed. The second point was that opportunity for personal hearing was not given and the rules of natural

justice were grossly violated. On the first point the Tribunal in its order dated 9.10.1990 observed that compliance of Provision of Section 8(3) was made and this mandatory requirement was duly complied by the Competent Authority. The order of the Competent Authority was thus not set aside in the remand order on this ground. As such, after remand the competent Authority was not required to issue fresh draft statement u/s.8(3) and notice thereafter. He was required to proceed on the basis of draft statement u/s.8(3). More over, Annexure : F shows that the Appeal was filed by Chhakubhai Panchhabhai and not by the petitioners. The appellant Chhakubhai Panchhabhai raised another grievance that opportunity of personal hearing was not given which was accepted by the Tribunal in its order dated 9.10.1990 (Annexure : F) and on this ground the order of the Competent Authority was set aside and de-novo hearing was directed. The De-novo hearing under these circumstances means hearing the appellant Chhakubhai and then passing the order and not that fresh draft statement u/s.8(3) should have been issued by the competent Authority.

9. It may also be mentioned that fresh draft statement u/s.8(3) was not required to be issued because there was no other person claiming interest in the property. The Tribunal in its impugned order (Annexure : A) has observed that Survey No.56/2 was purchased by Chhakubhai in his own capacity and it was his personal property. There was no evidence to show that the land was HUF or ancestral property. This finding hardly requires interference. In the Affidavit of the Competent Authority filed in this petition also it is clearly stated that Survey No.56/2 was purchased by Chhakubhai in his own capacity and it was his self acquired property. Consequently his son and daughter cannot be heard to say that it was joint family property in which they have share. If this is so then fresh draft statement u/s.8(3) was not required to be issued by the Competent Authority after the remand order.

10. The Tribunal in the impugned order Annexure : A has further observed that there was no evidence to show that Survey No.56/2 was ancestral property. On the other hand there was evidence that it was purchased by Chhakubhai from Harishchandsing and his name was mutated vide entry No.557. The Tribunal was therefore rightly of the opinion that it should not be considered as ancestral property and other members of the family had no right or interest therein. This observation of the Tribunal also does not require interference in this petition. Consequently the Competent Authority after remand gave

opportunity of hearing to the appellant which was confirmed by the Tribunal in its order (Annexure : A). The Tribunal further found that the Competent Authority has complied with the procedure as directed in the remand order. Consequently on this ground the impugned orders cannot be set aside.

11. Relying upon the case of State of Gujarat v/s. Gordhanbhai Becharbhai, reported in 1995 (2) GLH 97 shri N.D.Nanavati contended that once the order is appealed against, such order cannot be said to have acquired finality and since the order of the competent Authority was set aside and the matter was remanded all the proceedings taken by the competent Authority deserve to be reversed and as such taking of possession and allotment to three societies is of no consequence. In this case it was held by this Court that once the order is appealed against, such order cannot be said to have acquired finality. In this case an Appeal was filed against the order of the competent Authority and the Appeal was allowed and the order of the Competent Authority was quashed. It was therefore held that all consequential actions which have been taken in the mean time have to be reversed and the functionaries under the Act have to abide by the order passed by the Appellate Authority and if any authority has taken steps on the basis of an order which is subsequently set aside those steps deserve to be reversed and the process of reversal must be followed so as to take order of the Appellate Authority to its logical end. However, in my view the benefit of this verdict cannot be given to the petitioners. The Appeal was not filed by the petitioners. It was filed by their father. He was afforded opportunity of hearing by the Competent Authority and then the Competent Authority passed the order declaring the same area of land as vacant and excess from the holding of the petitioners' father. If on merits the order of the competent Authority remained the same then all actions taken in pursuance of the earlier order of the competent Authority require no reversal. The reversal as a whole or piecemeal reversal could have been made by the competent Authority only when he would have partly reversed his earlier order. If on the other hand there was no change in the earlier order passed by the competent Authority then there was no question of reversal of proceedings for taking possession and for alloting major portion of the excess land to three housing cooperative societies.

12. It was also contended that the action of the competent Authority in taking possession was actually a

paper transaction and no actual possession was taken. This contention also cannot be accepted. From the counter Affidavit of the Competent Authority it is clear that declaration of excess land was made on 26.8.1987. Notification u/s.10(1) of the Act was published in the Gazette on 16.9.1987 whereas notification u/s.10(3) was published in the Gazette on 28.11.1987. Thereafter notice u/s.10(5) of the Act was issued on 1.12.1987 and possession of the land in question was taken on 28.3.1988. The land holder was awarded compensation u/s.11 of the Act vide order dated 17.3.1989. Thereafter major portion of the excess land was allotted to three cooperative housing societies mentioned in Para : 5 of the Counter Affidavit. Under these circumstances it cannot be said that paper possession was taken as back as 28.3.1988. Allotment to three housing societies also cannot be said to be collusive action of the respondents. Possession was also handed over to the three cooperative housing societies. Consequently it cannot be believed that the action of taking over possession by the competent Authority was a mere paper transaction. Compensation was awarded to the land holder on 17.3.1989. In these circumstances the impugned orders cannot be set aside on the ground that the action of taking possession was a mere paper transaction. Consequently there remains no occasion for issuing direction that the possession of the excess vacant land be restored to the petitioners or that an alternative direction be issued to make available to the petitioners land measuring the same area in the same locality as was suggested in Special Civil Application No.3877 of 1998, decided on 2.9.1998. Since the action of taking over possession was in accordance with law, the petitioners, who have no interest in the land in question, can not claim restoration of possession.

13. The case of DAHYABHAI MANORBHAI PATEL v/s. THE COMPETENT AUTHORITY, reported in 1987 (2) GLR 1396 relied upon by Shri nanavati is of little help to him. It was held in this case that Section 33 of the Act provides for an appeal and the period of appeal is 30 days from the date of communication of the order of the competent Authority to the aggrieved person. It was also held that delay in filing the appeal can be condoned if the case falls under the principles laid down by the Supreme Court. Likewise it was held that merely because notification u/s.10(5) vesting the land in the Government has been published it does not follow that the right of appeal is lost. It was not urged by Shri Premal Joshi that the right of Appeal of the petitioners' father was lost because proceeding upto Section 10(5) of the Act

were taken nor it was argued that the Appeal preferred by the petitioners' father was beyond time and delay was improperly condoned. Consequently this Authority need not be discussed further.

14. For the reasons stated above I do not find any illegality in the impugned orders Annexures : A & B. Consequently I do not find any merit in this petition which is hereby dismissed with no order as to costs.

sd/-

Date : January 25, 2001 (D. C. Srivastava, J.)

sas